

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3453 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRASINH UDESINH CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR AD DESAI for Petitioner

MR DP JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/11/1999

ORAL JUDGEMENT

1. The petitioner having been detained by detaining authority namely, Commissioner of Police, Ahmedabad city, Ahmedabad by order dated 13th February 1999 in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [for short 'the PASA Act'], has approached this Court with this petition under Article 226 of the Constitution of India, challenging the order of detention.

2. The grounds of detention indicate that the petitioner came to be detained by the impugned order upon a subjective satisfaction of the detaining authority that the detenu / petitioner is a bootlegger and offence is registered against him under the Prohibition Act. Statements of two witnesses are considered by the detaining authority to satisfy itself that the detenu is engaged in bootlegging activities and is using force to pursue the illegal activities that his such activities have resulted into disruption of public order, that ordinary law is not sufficient to deter / prevent him from pursuing his bootlegging activities and therefore, detention was the only remedy available to the detaining authority for preventing the petitioner from pursuing his bootlegging activities.

3. The petitioner challenges the detention mainly on the ground that admittedly the petitioner does not know Gujarati language and therefore, Hindi version of the documents relied upon by the detaining authority was supplied to him, but late i.e. on 26th February 1999 as against the detention order dated 13th February 1999. This delay has deprived the petitioner of making an effective representation within stipulated period of 12 days and therefore, the continued detention is bad in eye of law. It is also contended that the petitioner was in judicial custody when the order of detention was passed. The detaining authority has not considered a less drastic remedy of opposing the bail or of cancelling the bail and therefore also, the order is bad in eye of law and the same may be quashed and set aside.

4. Mr. A.D.Desai, learned Advocate for the petitioner has drawn attention of this Court to ground 7[b] of the petition and submitted that the petitioner was in custody when the order was passed. He could not have continued his illegal activities while in custody. The detaining authority could have opposed the grant of bail to the petitioner and thereafter also, the detaining authority could have approached appropriate Court for cancellation of bail. These available less drastic remedies have not been considered by the detaining authority. Mr. Desai further submitted that, because the Hindi version was given after lapse of 12 days from the date of detention, the petitioner is deprived of making an effective representation which is a constitutionally guaranteed right and on this count also, the order of detention is bad in eye of law. He therefore urged that the petition may be allowed and the impugned order may be quashed and set aside.

5. Mr.D.P.Joshi, learned AGP has opposed this petition. He has drawn the attention of this Court to the affidavit in reply to indicate that the detaining authority was subjectively satisfied about the illegal bootlegging activities of the petitioner and his acts disturbing public order and public peace. According to the detaining authority, detention was the only remedy available, about which also he has recorded subjective satisfaction and therefore, the petition may be dismissed.

6. Having regard to the rival side contentions in light of the facts of the present case, there are two glaring features which have vitiated the detention order.

7. If para 6 of the affidavit in reply filed by the detaining authority is considered, it is clear that the Hindi version of the documents supplied to the detenu, was supplied to the detenu on 26th February 1999. Admittedly, the detention order was passed on 13th February 1999. The petitioner was informed that if he wants to make a representation against the detention order, he may do so within 12 days from the date of order of detention. The petitioner therefore could have made the representation on or before 25th February 1999, whereas the Hindi version was supplied to him on 26th February 1999 i.e. after lapse of a period of 12 days. This has deprived him of a right of making an effective representation. The order, therefore, is bad in the eye of law and stands vitiated.

8. Likewise, the petitioner was in custody when the detention order came to be passed. This aspect is not controverted in the affidavit in reply. The grounds of detention indicate that the detaining authority has not taken into consideration the availability of a less drastic remedy in the nature of opposing the grant of bail to the petitioner and / or of approaching the appropriate Court for cancellation of bail in event bail is granted to the petitioner. The grounds of detention clearly indicate that the detaining authority was aware that the detenu is in judicial custody and it is recorded by the detaining authority that the authority apprehends that the detenu on being released on bail, may resume his illegal / antisocial activities. The authority has overlooked the fact that the detenu could not have continued his activities while in custody. His release on bail, as and when applied for, could have been opposed. This less drastic remedy ought to have been considered. The authority has not considered the availability of remedy of opposing the bail application

and / or of cancelling the bail and in therefore, in view of a Division Bench of this Court [Coram : C.K.Thakkar & A.L.Dave, JJ] in Letters Patent Appeal No. 1056/99 in Special Civil Application No.8650/98 in case of Yunusbhai Hasanbhai Ghanchi v/s District Magistrate, dated 15th September, 1999, the order of detention suffers from vice of non-application of mind.

9. On the above grounds, the detention order deserves to be quashed and set aside and the petition deserves to be allowed.

10. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police, Ahmedabad city, Ahmedabad on 13th of February 1999 in respect of the petitioner - Mahendrasinh Udesinh Chauhan, is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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